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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

ONE HUNDRED COPIES ORDERED PRINTED.



SAINT PAUL:

FREDERICK DRISCOLL, STATE PRINTER.

(PRESS PRINTING COMPANY.)

1865.

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CHAPTER XLIV.

POWERS.

1 SECTION. 1. Powers, except as authorized and provided
2 for in this chapter, are abolished; and the creation, con-
3 struction, and execution of powers, shall be governed by
4 the provisions herein contained.

1 SECT. 2. A power is an authority to do some act in re-
2 lation to lands, or the creation of estates therein, or of
3 charges thereon, which the owner granting or reserving
4 such power, might himself lawfully perform. C. S. P. 391, Sect. 1.
Amended. c 34

1 SECT. 3. No person is capable in law of granting a
2 power, who is not at the same time capable of alienating
3 some interest in the land to which the power relates.

1 SECT. 4. Powers as authorized in this chapter, are gen-
2 eral or special, and beneficial or in trust.

1 SECT. 5. A power is general when it authorizes the
2 alienation in fee, by means of a conveyance, will, or charge
3 of the lands embraced in the power to any alienee whatever.

1 SECT. 6. A power is special:

2 *First.*—When the person or class of persons to whom the
3 disposition of the lands under the power is to be made, are
4 designated.

5 *Second.*—When the power authorizes the alienation, by
6 means of a conveyance, will, or charge of a particular es-
7 tate, or interest less than a fee.

1 SECT. 7. A general or special power is beneficial, when
2 no person other than the grantee has, by the terms of its
3 creation, any interest in its execution.

1 SECT. 8. A general and beneficial power may be given
2 to a married woman to dispose during the marriage, and
3 without the concurrence of her husband, of land conveyed
4 or devised to her in fee.

1 SECT. 9. When an absolute power of disposition, not
2 accompanied by any trust is given to the owner of a par-
3 ticular estate for life or years, such estate shall be changed

4 into a fee; absolute in respect to the rights of creditors
5 and purchasers, but subject to any future estate limited
6 thereon, in case the power is not executed, or the lands sold
7 for the satisfaction of debts.

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C. S. p. 391, Sect. 1.
Amended.

1 SECT. 10. When a like power of disposition is given to
2 any person to whom no particular estate is limited, such
3 person shall also take a fee, subject to any future estate
4 that may be limited thereon, but absolute in respect to
5 creditors and purchasers.

1 SECT. 11. In all cases where such power of disposition
2 is given, and no remainder is limited on the estate of the
3 grantee of the power, such grantee shall be entitled to an
4 absolute fee.

1 SECT. 12. When a general and beneficial power to de-
2 vise the inheritance is given to a tenant for life or for years,
3 such tenant shall be deemed to possess an absolute power
4 of disposition, within the meaning and subject to the pro-
5 visions of the three preceding sections.

1 SECT. 13. Every power of disposition shall be deemed
2 absolute, by means of which the grantee is enabled, in his
3 life time, to dispose of the entire fee for his own benefit.

1 SECT. 14. When the grantor, in any conveyance re-
2 serves to himself for his own benefit, an absolute power of
3 revocation, such grantor shall still be deemed the absolute
4 owner of the estate conveyed, so far as the rights of credi-
5 tors and purchasers are concerned.

1 SECT. 15. A special and beneficial power may be granted.
2 *First.*—To a married woman to dispose during the mar-
3 riage, and without the consent of her husband, of any es-
4 tate less than a fee, belonging to her in the lands to which
5 the power relates.

6 *Second.*—To a tenant for life, of the lands embraced in
7 the power to make leases for not more than twenty-one
8 years, and to commence in possession during his life.

1 SECT. 16. The power of a tenant for life to make leas-
2 es, is not assignable as a separate interest, and will pass,
3 unless specially excepted, by any conveyance of such es-
4 tate; and if specially excepted in any such conveyance, it
5 is extinguished.

1 SECT. 17. Such power may be released by the tenant
2 to any person entitled to an expectant estate in the land,
3 and shall thereupon be extinguished.

1 SECT. 18. A mortgage executed by a tenant for life
 2 having a power to make leases, or by a married woman by
 3 virtue of any beneficial power, does not extinguish or sus-
 4 pend the power; but the power is bound by the mortgage;
 5 in the same manner as the lands embraced therein.

1 SECT. 19. The effects of such lien by mortgage on the
 2 power are—

3 *First.*—That the mortgagee is entitled in equity, to an
 4 execution of the power, so far as the satisfaction of his debt
 5 may require.

C. S. p. 391, Sect. 1.
 Amended. 34

6 *Second.*—That any subsequent estate created by the own-
 7 er, in execution of the power, becomes subject to the mort-
 8 gage in the same manner as if in terms embraced therein.

1 SECT. 20. No beneficial power, general or special, here-
 2 after created, other than such as are enumerated and defined
 3 in the preceding sections, of this chapter, shall be valid.

1 SECT. 21. Every special and beneficial power, is liable
 2 in equity to the claims of creditors in the same manner as
 3 other interests that cannot be reached by an execution at
 4 law; and the execution of the power may be decreed for
 5 the benefit of the creditors entitled.

1 SECT. 22. A general power is in trust when any person
 2 or class of persons, other than the grantee of such power, is
 3 designated as entitled to the proceeds, or any portion of the
 4 proceeds or other benefits, to arise from the alienation of
 5 the lands according to the power.

1 SECT. 23. A special power is in trust,

2 *First.*—When the disposition which it authorizes, is lim-
 3 ited to be made to any particular person or class of persons
 4 other than the grantee of such power.

5 *Second.*—When any person or class of persons other than
 6 the grantee, is entitled to any benefit from the disposition
 7 or charge authorized by the power.

1 SECT. 24. Every trust power, unless its execution or
 2 non-execution is made expressly to depend on the will of
 3 the grantee is imperative, and imposes a duty on the gran-
 4 tee, the performance of which may be compelled in equity,
 5 for the benefit of the parties interested.

1 SECT. 25. A trust power does not cease to be impera-
 2 tive when the grantee has the right to select any, and ex-
 3 clude others of the persons designated as the objects of the
 4 trust.

1 SECT. 26. When a disposition under a power is directed
2 to be made to, or among or between several persons, with-
3 out any specification of the share or sum to be allotted to
4 each; all the persons designated shall be entitled to an equal
5 proportion.

1 SECT. 27. But when the terms of the power import that
2 the estate or fund is to be distributed between the persons
3 so designated, in such manner or proportion as the trust-
4 tee of the power may think proper, the trustee may allot
5 the whole to any one or more of such persons, in exclusion
6 of the others.

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C. S. p. 391, Sect. 1.
Amended.

1 SECT. 28. If the trustee of a power, with the right of
2 selection dies, leaving the power unexecuted, its execution
3 shall be decreed in the district court for the benefit, equally,
4 of all the persons designated as objects of the trust.

1 SECT. 29. When a power in trust is created by will,
2 and the testator has omitted to designate by whom the pow-
3 er is to be executed, its execution shall devolve on the dis-
4 trict court.

1 SECT. 30. The provisions contained in the preceding
2 chapter, from section twenty-two to section twenty-seven,
3 both inclusive, in relation to express trusts and trustees,
4 shall apply equally to powers in trust, and the grantees of
5 such powers.

1 SECT. 31. The execution, in whole or in part, of any
2 trust power may be decreed in equity for the benefit of
3 the creditors, or assignees, of any person entitled, as one
4 of the objects of the trust, to compel its execution, when
5 the interest of the objects of such trust is assignable.

1 SECT. 32. Every beneficial power, and the interest of every
2 person entitled to compel the execution of a trust power,
3 shall pass to the assignees of the estate and effects of the
4 person in whom such power, or interest is vested, under
5 any general assignment of the estate and effects of such
6 person, for the benefit of creditors made pursuant to law.

1 SECT. 33. The grantor of any conveyance may reserve
2 to himself any power, beneficial or in trust, which he might
3 lawfully grant to another, and every power so reserved,
4 shall be subject to the provisions of this chapter, in the
5 same manner as if granted to another.

1 SECT. 34. A power may be granted:

2 *First.*—By a suitable clause contained in a conveyance
3 of some estate in the lands, to which the power relates.

4 *Second.*—By devise in a last will and testament.

1 SECT. 35. Every power shall be a lien or charge upon
2 the lands which it embraces, as against creditors and pur-
3 chasers in good faith, and without notice, of or from any
4 person having an estate in such lands only from the time
5 the instrument containing the power is duly recorded; but
6 as against all other persons the power shall be a lien from
7 the time the instrument in which it is contained takes effect.

C. S. p. 391, Sect. 1.
Amended.

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1 SECT. 36. Every power, beneficial or in trust, is irre-
2 vocable, unless an authority to revoke it is reserved or
3 granted in the instrument creating the power.

1 SECT. 37. A power may be vested in any person capa-
2 ble in law of holding lands, but cannot be executed by any
3 person not capable of alienating lands, except in the single
4 case mentioned in the next section.

1 SECT. 38. A married woman may execute a power du-
2 ring her marriage, by grant or devise, as may be author-
3 ized by the power, without the concurrence of her husband,
4 unless by the terms of the power, its execution by her du-
5 ring marriage is expressly or impliedly prohibited; but no
6 power vested in a married woman during her infancy, can
7 be exercised by her until she attains her full age.

1 SECT. 39. When a power is vested in several persons,
2 all must unite in its execution; but if, previous to such ex-
3 ecution, one or more of such persons shall die, the power
4 may be executed by the survivors.

1 SECT. 40. No power can be executed except by some
2 instrument in writing, which would be sufficient in law to
3 pass the estate or interest intended to pass under the pow-
4 er, if the person executing the power were the actual
5 owner.

1 SECT. 41. Every instrument, except a will, made in
2 execution of a power, whether it is a power of revocation or
3 otherwise, shall be deemed a conveyance within the mean-
4 ing and subject to the provisions of chapter forty.

1 SECT. 42. When a power to dispose of lands is confined
2 to a disposition by devise or will, the instrument of execu-
3 tion must be a will duly executed according to the provis-
4 ions of law relating to wills of real and personal estate.

1 SECT. 43. When a power is confined to a disposition
2 by grant, it cannot be executed by will, although the dis-
3 position is not intended to take effect until after the death
4 of the party in whom the power is vested.

1 SECT. 44. When the grantor of a power has directed or
2 authorized it to be executed by an instrument not sufficient
3 to pass the estate, such power shall not be void, but its ex-
4 ecution shall be governed by the rules prescribed in this
5 chapter.

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C. S. p. 891, Sect. 1.
Amended.

1 SECT. 45. When the grantor has directed any for-
2 malities to be used in the execution of a power, in addi-
3 tion to those which would be sufficient by law to pass the
4 estate, the observance of such additional formalities shall
5 not be necessary to a valid execution of the power.

1 SECT. 46. When the conditions annexed to a power
2 are merely nominal, and evince no intention of actual ben-
3 efit to the party to whom, or in whose favor they are to be
4 performed, they may be wholly disregarded in the execu-
5 tion of the power.

1 SECT. 47. With the exceptions contained in the pre-
2 ceding sections, the intentions of a grantor of a power, as
3 to the mode, time, and conditions of its execution, shall be
4 observed, subject to the power of the district court to sup-
5 ply a defective execution, in the cases hereinafter provided.

1 SECT. 48. When the consent of a third person to the
2 execution of the power is requisite, such consent shall be
3 expressed in the instrument by which the power is executed,
4 or shall be certified in writing thereon; and in the first case
5 the instrument of execution, in the second, the certificate
6 shall be signed by the party whose consent is required;
7 and to entitle the instrument to be recorded, such signature
8 shall be duly proved or acknowledged, in the same manner
9 as if subscribed to a conveyance of land.

1 SECT. 49. No disposition by virtue of a power, shall
2 be void in law or equity, on the ground that it is more ex-
3 tensive than was authorized by the power; but every estate
4 or interest so created, so far as embraced by the terms of
5 the power, shall be good and valid.

1 SECT. 50. Every instrument executed by the grantee
2 of a power conveying an estate, or creating a charge, which
3 such grantee is authorized by the power to convey or cre-
4 ate, but which he would have no right to convey or create,
5 unless by virtue of his power, shall be deemed a valid exe-

6 cution of the power, although such power is not recited or.
7 referred to therein.

1 SECT. 51. Instruments in execution of a power are af-
2 fected by fraud, both in law and equity, in the same man-
3 ner as conveyances by owners or trustees.

1 SECT. 52. Lands embraced in a power to devise, pass
2 by a will purporting to convey all the real property of the
3 testator, unless the intent that the will shall not operate as
4 an execution of the power, appears expressly, or by neces-
5 sary implication. C. S. p. 391, Sect. 1. Amended. c 34

1 SECT. 53. Every estate or interest given by a parent
2 to a descendant, by virtue of a beneficial power, or of a
3 power in trust, with a right of selection, shall be deemed
4 an advancement to such descendant, to the same extent
5 and under the same circumstances, that a gift of real or
6 personal estate would be deemed an advancement.

1 SECT. 54. The period during which the absolute right of
2 alienation may be suspended by any instrument in executi-
3 on of a power, shall be computed from the time of the creation
4 of the power, and not from the date of such instrument.

1 SECT. 55. No estate or interest can be given or limited
2 to any person, by an instrument in execution, of a power
3 which such person would not have been capable of taking
4 under the instrument by which the power was granted.

1 SECT. 56. When a married woman entitled to an estate
2 in fee, is authorized by a power to dispose of such estate
3 during her marriage, she may, by virtue of such power,
4 create any estate which she might create if unmarried.

1 SECT. 57. When the execution of a power in trust is de-
2 fective in whole or in part, under the provisions of this
3 chapter, its proper execution may be decreed in equity,
4 in favor of the person designated as the object of the
5 trust.

1 SECT. 58. Purchasers, for a valuable consideration,
2 claiming under a defective execution of any power, are
3 entitled to the same relief in equity as similar purcha-
4 sers claiming under a defective conveyance from an actual
5 owner.

1 SECT. 59. When a power to sell lands is given to the
2 grantee in any mortgage or other conveyance intended to
3 secure the payment of money, the power shall be deemed a

4 part of the security, shall vest in, and may be executed by
5 any person, who by assignment or otherwise, shall become
6 entitled to the money so secured to be paid.

1 SECT. 60. The provisions of this chapter shall not ex-
2 tend to a simple power of attorney, to convey lands in the
3 name and for the benefit of the owner.

1 SECT. 61. The term "grantor of a power" is used in
2 this chapter as designating the person by whom a power is
3 created, whether by grant or devise; and the term "gran-
4 tee of a power," is used as designating the person in whom
5 a power is vested, whether by grant, devise, or reserva-
6 tion.

CHAPTER XLV.

ESTATES IN REAL PROPERTY.

1 SECTION 1. Estates in lands are divided into estates of
2 inheritance, estates for life, estates for years, estates at will
3 and by sufferance.

c. s., ch. 31.

1 SECT. 2. Every estate of inheritance shall continue to be
2 termed a fee simple, or fee; and every such estate, when
3 not defeasible or conditional, shall be a fee simple or an
4 absolute fee.

1 SECT. 3. In all cases where any person or persons
2 would, if this chapter had not been passed at any time
3 hereafter, become seized in fee tail, of any lands, tene-
4 ments, or hereditaments, by virtue of any devise, gift,
5 grant, or other conveyance heretofore made, or hereafter
6 to be made, or by any other means whatsoever, such per-
7 son or persons, instead of becoming seized thereof, in fee
8 tail, shall be deemed and adjudged to be seized thereof as
9 an allodium.

1 SECT. 4. Where lands, tenements, or hereditaments
2 heretofore have been devised, granted, or otherwise con-
3 veyed by a tenant in tail, and the person to whom such de-
4 vise, grant, or other conveyance hath been made, his heirs
5 or assigns, have from the time such devise took effect, or
6 from the time such grant or conveyance was made, to the
7 day of passing this chapter, been in the uninterrupted pos-
8 session of such lands, tenements, or hereditaments, and